

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF MESA

THIS AGREEMENT is entered into 10th February, 2004 pursuant to Arizona Revised Statutes Section 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF MESA, acting by and through its MAYOR and CITY COUNCIL (the "City").

I. DEFINITIONS

"Accelerated Construction Schedule" means the Advance Plan of Construction of the existing Red Mountain Freeway to be constructed with Asphalt Rubberized Friction Course (ARFC) surfacing, hereinafter referred to as rubberized asphalt, outlined on Exhibit "A", attached here to and made a part hereof.

"City Loan" means those funds to be advanced by the City to the State for the sole purpose of accelerating construction of rubberized asphalt on the section of the Red Mountain Freeway, identified herein.

"City Loan Account" means the account established by the City with Arizona State Treasurer's Local Government Investment Pool and containing monies to be used to fund the City Loan.

"City's Deposit" means the monies estimated to be deposited by the City with the State Treasurer by wire transfer for the benefit of the Department's Contract Accounting office, to fund actual costs of the Accelerated Construction Schedule, referenced herein. Estimates are based on \$325,000.00 per mile of construction.

"Department" means the Arizona Department of Transportation.

"Project" means the segment of the existing Red Mountain Freeway from Val Vista Drive to Higley Road as outlined on Exhibit A.

"State Transportation Board" means the State Transportation Board of the Arizona Department of Transportation.

"State Treasurer" means the Treasurer of the State of Arizona.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

NO. 26647
Filed with the Secretary of State
Date Filed: 02/10/2004
Janice K. Brewer
Secretary of State

By: Dan D. Graesswald

II. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes Section 9-500.11 and 9-500.17 and City Charter, Section 103 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the City.

3. The State has programmed funding in the Fiscal Years (FYs) 2004, 2005 and 2006 of the 2004-2008 Tentative Five Year Construction Program, for construction of the Project beginning in Fall 2003 and completing in Spring 2006.

4. The City desires to accelerate the construction of the Project referenced above, to be completed in accordance with the Accelerated Project Schedule, outlined on Exhibit A. The City has determined that such accelerated construction and completion will assist in the creation or retention of jobs or will otherwise improve or enhance the economic welfare of the inhabitants of the City."

5. In order to accelerate and complete construction of the Project, the City has agreed to provide, or cause to be provided from sources lawfully available by the City, all necessary funds to advance the construction and pay construction costs of the Project, in accordance with the Accelerated Project Schedule, outlined on Exhibit A.

6. Unless paid from other lawfully available funds, the State will repay, from State Program Funds, the principal amount of the City Loan on or before November 1, 2005.

7. The parties hereto agree and acknowledge to the following conditions: 1) The amounts referenced in this agreement are subject to change; 2) The estimated amounts can change substantially; and, 3) Both parties will perform their responsibilities consistent with the agreement.

III. SCOPE OF WORK

1. The State will:

a. Provide to State standards, design plans, specifications and such other documents and services necessary for construction bidding and construction of the Project. Administer all aspects of the design of the Project to accommodate the Advanced Construction Schedule.

b. Upon execution of this agreement, invoice the City in the estimated amount shown on Exhibit A. The City's Deposit shall occur prior to Bid Opening of the Project by the State's Contract and Specifications office.

c. After Bid Opening for the Project, and prior to the State's recommendation for approval of award by the State's Transportation Board, notify the City of the bid amount to be recommended and request concurrence within five (5) business days of receipt of notification. If the difference between the bid amount is greater than 10% of the estimates shown on Exhibit A and deposited by the City, the State will provide written justification to the City, and stipulate the required amount to be added to the City Loan Account. If the City does not notify the State of disapproval within the stated time frame, the State may proceed to recommend award of the bid.

d. If the City disapproves the bid amount to be recommended for approval and award, the State will make the determination to proceed with the Project without the City's participation. If the City disapproves of the bid amount and does not desire to proceed with the Project, the State will return all funds from the City Loan Account, less Project costs incurred by the State, up to the time of receipt of the City's notification to cancel the Project. If both parties disapprove of the bid amount, each party agrees to share in the Project costs incurred by the State, up to the cancellation of the Project.

e. Upon receipt of the City's concurrence, and if applicable, receipt of any additional funds required, recommend by resolution, to the State's Transportation Board, approval and award of the contract. Administer the construction of same and make all payments to the contractor(s). Be responsible for any contractor claims for extra compensation, attributable to the State.

f. Expend the funds provided from the City Loan Account, for the sole purpose of paying contractor payments associated with the cost for advance construction of the Project, on a schedule as near as possible to the Accelerated Construction Schedule, outlined on Exhibit A.

g. Repay the City the actual principal amount advanced to the State through the City Loan, on or before November 1, 2005.

h. Within 60 days after construction completion of the Project, provide to the City a report of actual construction costs for the Project that identifies the total construction costs detailed by month with separate identification of amounts paid to contractor(s) versus other Project costs.

2. The City will:

a. Be responsible for all costs associated with the advancement of the Project identified herein, and agree that all applicable funds shall be deposited with the State Treasurer's Office prior to Bid Award by the State's Transportation Board of the Project. Said funds for the Project are an estimated total of \$700,000.00. Estimate is based on \$325,000.00 per mile of construction.

b. Upon execution of this agreement and receipt of an invoice from the State, establish the City Loan Account with an amount equal to \$700,000.00 for the construction of the Project, shown on Exhibit A, prior to Bid Opening of the Project by the State's Contract and Specifications office.

c. All interest earnings and investment income on the City Loan Account shall be owned by the City and paid to the City upon disbursement by the Arizona State Treasurer's Office. Any monies remaining in said City Loan Account after payment of all costs of constructing the project shall be owned by and paid to the City. The State will be the sole signature on the City Loan Account.

d. Upon execution of this agreement and receipt of an invoice from the State, establish the City Loan Account with an amount equal to \$700,000.00 for the construction of the Project, shown on Exhibit A, prior to Bid Opening of the Project by the State's Contract and Specifications office.

e. Upon notification from the State and the City's concurrence of the bid amount, deposit any additional estimated funds required, if applicable, prior to contract award of the Project construction contract, should the contract award amount be greater than the City's deposit referenced in III.2.b herein, from any lawfully available source, to the State solely for the purpose to pay the contractor payments and all necessary costs associated with the advance construction of the Project, on a schedule as near as possible to the Accelerated Construction Schedule, shown on Exhibit A. Be responsible for any contractor claims for extra compensation attributable to the City.

f. Authorize the State Treasurer's Office to accept withdraw requests for the City Loan Account from a designated representative of the State.

IV. MISCELLANEOUS PROVISIONS

1. This Agreement shall remain in force and effect until completion of the design, construction of the Project and repayment by the State of the actual principle amount of the City Loan.

2. In the event this Agreement is terminated by the City, all Project costs incurred by the State, in connection with the design or bidding process for the construction contracts, shall be borne by the City. The State shall share in the Project costs incurred, should both parties agree to cancel the Project due to excessive Project costs.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be canceled in accordance with Arizona Revised Statutes Section 38-511.

5. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference regarding "Non-Discrimination".

6. Non-Availability of Funds: Every payment obligation of ADOT and the City under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by ADOT or the City at the end of the period for which the funds are available. No liability shall accrue to ADOT or the City in the event this provision is exercised, and ADOT or the City shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

7. In the event of any controversy which may arise out of this Agreement, the parties shall agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

8. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

For Agreement Correspondence:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue, Mail Drop 616E
Phoenix, AZ 85007

City of Mesa
City Manager
20 E Main Street
Mesa, AZ 85201

For Technical Reference Contact:

Arizona Department of Transportation
Roadway Design Group
Attn: Richard DeBoer, Project Manager
205 S. 17th Avenue, Mail Drop 615E
Phoenix, AZ 85007

City of Mesa
Asst. Development Services Manager
Attn: Jeff Martin
P. O. Box 1466
Mesa, AZ 85211-1466

For Financial Reference Contact:

Arizona Department of Transportation
Fiscal Services Management Division
Attn: Contract Accounting Manager
205 S. 17th Avenue, Mail Drop 204B
Phoenix, AZ 85007

City of Mesa
Financial Services Department
Attn: Finance Director
20 E. Main Street suite 350
Mesa, AZ 85210

10. Attached hereto and incorporated herein is the written determination of each Party's legal counsel pursuant to Arizona Revised Statutes, Section 11-952D that the Parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

11. This Agreement may only be amended with the written consent of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

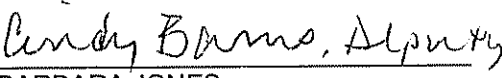
CITY OF MESA

By 
MICHAEL HUTCHINSON
City Manager

STATE OF ARIZONA
Department of Transportation

By 
DANIEL S. LANCE, P.E.
Deputy State Engineer

ATTEST

By 
BARBARA JONES
City Clerk



RUBBERIZED ASPHALT SURFACING PROPOSED ADVANCED PLAN

Exhibit "A"

Route	Section	Miles	ESTIMATED COSTS	Approx. Project Start date	Repayment FY	TRACS No.
	QUIET PAVEMENT (PHASE 2)					
L202, Red Mountain	Val Vista Dr. - Higley Rd.	2.2	\$0.7	March/April 2004	2006	H637102C
	Subtotal:		\$0.7			

ESTIMATED DRAW SCHEDULE:	
Jan-04	\$100,000
Feb-04	\$50,000
Mar-04	\$250,000
Apr-04	\$250,000
May-04	\$50,000

RESOLUTION NO. 8161

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF MESA AND STATE OF ARIZONA, BY AND THROUGH THE DEPARTMENT OF TRANSPORTATION.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, AS FOLLOWS:

Section 1: That the Intergovernmental Agreement between the City of Mesa and State of Arizona, by and through the Department of Transportation, to advance the application of rubberized asphalt on the Red Mountain Freeway from Val Vista Drive to Higley Road, is hereby approved.

Section 2: That the City Manager, Michael T. Hutchinson, or his designated representative, is authorized and directed to execute the agreement, and the City Clerk is authorized and directed to attest to the signature of the City Manager thereon.

PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona, this 15 day of December, 2003.

APPROVED:



[Signature]
Vice Mayor

ATTEST:

[Signature]
City Clerk

APPROVAL OF THE CITY OF MESA ATTORNEY

I have reviewed the above referenced intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF MESA an agreement among public agencies which, has been reviewed pursuant to A.R.S. section 11-951 through 11-954 and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 24th day of December, 2003.

Debra Spurr

City Attorney



OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TERRY GODDARD
ATTORNEY GENERAL

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE: 602.542.8855

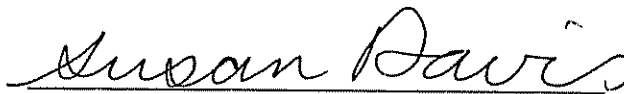
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR03-1025TRN (**JPA 03-060**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: February 4, 2004.

TERRY GODDARD
Attorney General


SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:mjf
Attachment
829015